

Summary of S. 744—The Border Security, Economic Opportunity, and Immigration Modernization Act

On April 17, 2013, Senators Chuck Schumer, John McCain, Dick Durbin, Lindsay Graham, Bob Menendez, Marco Rubio, Michael Bennet, and Jeff Flake introduced S.774, entitled the Border Security, Economic Opportunity, and Immigration Modernization Act. If passed, S.744 would grant amnesty to the approximately 12 million illegal aliens currently living in the U.S., create new guest worker programs for agricultural workers and low-skilled workers, and significantly increase legal immigration.

Title II—Immigrant Visas, Subtitle C

Future Immigration

MERIT-BASED POINTS TRACK ONE (section 2301, pg. 258)

Numerical Limitations

- Number of green cards available: Min. 120,000 annual green cards plus the recapture of unused from previous year; not to exceed 250,000
 - *Note: The 120,000 green cards granted under track one are **in addition** to the number specifically provided for EB-3 visas (under S. 744: 40% of the total number of EB visas; under the **current** law: 28.6% of the total number of EB visas)*
 - If in any year the annual number of green cards available is less than 75% of the number of applicants, then the number of available green cards increases by 5% (up to 250,000). However, the five percent increase cannot take place, despite not meeting 75% threshold, IF the unemployment rate is above 8.5%.
 - If in any year the annual number of green cards available is equal to or more than 75% of the number of applicants, the number of green cards stays the same
 - Application fee: \$1,500 fee plus any costs assessed to cover processing fees. Funds collected are placed into the Comprehensive Immigration Reform Trust Fund

Implementation

- Years 1-4 (*beginning the first fiscal year after enactment*)—Merit-based visas made available for green card seekers under the current EB-3 program
 - Skilled workers (2 years+ training/experience)
 - Professionals w/Bachelor's degrees
 - Unskilled workers in non-seasonal work (service industry)
- Beginning Year 5—creation of two “Tiers” for allocated points within the Track One system
 - 50% of green cards go to applicants with highest number of points under Tier 1; two-thirds of any unused going to Tier 1 and one-third going to Tier 1 or 2 the following year

- 50% of green cards go to applicants with highest number of points under Tier 2, two-thirds of any unused going to Tier 2 and one-third going to Tier 1 or 2 the following year
- *Tier 1*: DHS Secretary allocates points to Tier 1 applicants as follows:
 - Educational Attainment (advanced degrees can be from an institution of higher education in U.S. or a foreign equivalent)
 - Doctorate Degree: 15 points
 - Master's Degree: 10 points
 - Bachelor's Degree: 5 points
 - Employment Experience (up to 20 points)
 - For each year of "zone 5" employment: 3 points
 - For each year of "zone 4" employment: 2 points
 - *Note: "Zone 5 occupation" refers to an occupation that requires "extensive preparation" and is classified as a zone 5 occupation on the Occupational Information Network Database (O*NET) on the date of enactment (or similar database designated thereafter). "Zone 4 occupation" refers to an occupation that requires "considerable preparation" and is classified as a zone 4 occupation on the Occupational Information Network Database (O*NET) on the date of enactment (or similar database designated thereafter).*
 - Employment Related to Education—for applicants already in the U.S. who are employed full-time OR have an offer of full-time employment related to applicant's field
 - "zone 5" employment: 10 points
 - "zone 4" employment: 8 points
 - Entrepreneurship: 10 points for employing at least 2 employees in a zone 4 or 5 occupation
 - "High Demand" Occupation: 10 points if employed full-time in U.S. already (or has offer for such employment) in a "high demand occupation"
 - High demand occupation = 1 of the 5 occupations for which the highest number of nonimmigrants under H-1 visa program were sought to be admitted by employers previous FY (p.266)
 - Civic Involvement: 2 points for attesting to engaging in "significant amount" of community service as defined by DHS Secretary
 - English: 10 points for scoring 80% or higher on TOEFL (or equivalent score on similar test as determined by DHS Secretary)
 - Family
 - Sibling of a U.S. citizen: 10 points
 - Over 31, married, and one parent is a U.S. citizen: 10 points
 - Age
 - 18-24: 8 points

- 25-32: 6 points
 - 33-37: 4 points
- Diversity: 5 points for being a national of a country of which fewer than 50,000 nationals were granted green cards in the last 5 years
- *Tier 2*: DHS Secretary allocates points to Tier 2 applicants as follows:
 - Employment Experience (up to 20 points): 2 points for each year applicant has been *lawfully* employed in U.S.
 - Special Employment Criteria: 10 points for full-time employment in U.S. (or offer for such) in “high demand” tier 2 occupation, OR in a zone 1, 2, or 3 occupation
 - High demand occupation = 1 of the 5 occupations for which the highest number of positions were sought to become registered positions by employers under section 220(e) during previous FY
 - Primary Caregiver: 10 points for present or past employment as an undefined “primary caregiver” (unauthorized work not explicitly excluded)
 - Exceptional Employment Record: 10 points if DHS Secretary subjectively determines applicant had “exceptional” employment record
 - “Exceptional” factors to consider include: Promotions, longevity, changes in occupations from lower to higher zone, participated in safety training, and increases in pay
 - Civic Involvement: 2 points for applicants who have “demonstrated significant civic involvement”
 - English
 - Demonstrated English proficiency, as determined by a standardized test designated by the Secretary of Education: 10 points
 - Demonstrated English knowledge, as determined by a standardized test designated by the Secretary of Education: 5 points
 - Family
 - Sibling of a U.S. citizen: 10 points
 - Over 31, married, and one parent is a U.S. citizen: 10 points
 - Age
 - 18-24: 8 points
 - 25-32: 6 points
 - 33-37: 4 points
 - Diversity: 5 points for being a national of a country of which fewer than 50,000 nationals were granted green cards in the last 5 years
 - *Note: Illegal aliens granted RPI status are ineligible to receive a merit-based visa. In addition, aliens with pending or approved applications for merit-based or other green cards are ineligible to apply under the Track One system. The DHS Secretary can submit a proposal to Congress to modify the point system, but there is no requirement that Congress must act on it, and if it does, how.*

MERIT-BASED POINTS TRACK TWO (section 2302, pg. 271)

- Beginning FY 2014—creates a second merit-based green card system (UNCAPPED)
 - The program would eliminate the current visa backlog by:
 - Admitting one-seventh of employment-based petitioners (and their derivatives) who applied *prior* to enactment of S. 744 and have been waiting for at least 5 years. The admissions would begin in fiscal year 2015 and end in fiscal year 2021.
 - Immediately converting family-based green card petitions by spouses and children of LPRs to those of immediate relatives. This is done until the first day of first fiscal year beginning at least 18 months following enactment pursuant to sect. 2307(a)(3).
 - Admitting one-seventh of all other family-based petitioners (and their derivatives) who applied *prior* to enactment of S. 744 and have been waiting for at least 5 years. The admissions would begin in fiscal year 2015 and end in fiscal year 2021. All visas cleared out by 2023.
 - Unlimited number of green cards are available until backlog clears
 - Green card program ends after backlog clears
 - “Long-term alien workers” not admitted under a W nonimmigrant visa who has been lawfully present and authorized for employment for at least 10 years (such as RPI aliens)
 - *Note: Aliens considered “lawfully present” under current law include: those granted deferred action under President Obama’s DACA program, temporary protected status (TPS), and humanitarian parole. Beginning in FY 2029, this worker must be lawfully present in employment authorized status for 20 years.*

VISA LOTTERY (section 2303, pg. 276)

- Repeals visa lottery as of FY 2014
 - Lottery winners still receive visas FY 2013 & 2014
 - No lottery visas distributed after FY 2015

WORLDWIDE LEVELS & RECAPTURE OF UNUSED GREEN CARDS (section 2304, pg. 278)

- Employment-Based Immigrants
 - FY 2015
 - 140,000 plus
 - Any unused family-based visas from previous FY plus
 - Any unused employment-based visas from 1992-2013
 - After FY 2015
 - 140,000 plus
 - Any unused family-based visas from previous FY
- Family-Based Immigrants
 - FY 2015: (cannot be less than 226,000)

- 480,000 minus
- Number of immediate relative visas from previous FY plus
- Number of unused employment visas from previous FY plus
- Number of unused family-based visas from 1992-2013
- After FY 2015: (cannot be less than 226,000)
 - 480,000 minus
 - Number of immediate relative visas from previous FY plus
 - Number of unused employment visas from previous FY.

Note: The 226,000 minimum is unchanged from current law. However, the recapture of unused employment-based and family-based green cards from 1992 to 2013 represents an increase of hundreds of thousands when taken in conjunction with the reclassification of spouses and minor children of LPRs as outlined below.

RECLASSIFICATION OF SPOUSES AND MINOR CHILDREN OF LPRs

AS IMMEDIATE RELATIVES (section 2305, pg. 282)

- Increases family-based immigration by expanding the definition of immediate relative, and thereby granting an UNLIMITED number of green cards to:
 - spouses and children of current green card holders AND to their derivatives—
accompanying spouses and children
 - derivatives of the child, spouse, or parent of a U.S. citizen

- Creates new family-preference categories (as of the date of enactment, but ends the first day of the first FY that begins 18 months following the date of enactment, when a new preference system takes effect: see section 2307)
 - 1st Preference: Unmarried sons and daughters of citizens: 20% of family-based total plus any unused visas for siblings of U.S. citizens (currently capped at 23,400 plus any unused sibling visas)
 - 2nd Preference: Unmarried sons and unmarried daughters of green card holders: 20% of family-based total plus any unused visas for unmarried sons and daughters of citizens (currently capped at 114,200 plus the number (if any) by which such worldwide level exceeds 226,000 plus any used 1st preference)
 - 3rd Preference: Married sons and married daughters of citizens: 20% of family-based total plus any unused visas for unmarried sons and unmarried daughters of LPRs (currently capped at 23,400 plus any unused 1st and 2nd preference)
 - 4th Preference: Siblings of U.S. citizens: 40% of family-based total plus any unused visas for married sons and married daughters of citizens

Note: this allows for an influx of sibling-based green cards immediately prior to the category being folded into the new merit-based system. This is currently capped at 65,000 plus any unused visas from preferences 1-3.

Priority Dates

- The priority date for any family or employment-based green card petition is the date the application was filed with the Secretary of DHS (or State if applicable), unless the alien filed a labor certification with the Secretary of Labor first, in which case the labor certification date takes precedent.
- Treats derivatives as entitled to same status and order of consideration as principal

Procedure for Granting Immigrant Status: Conforming amendment adding new LPR immediate relative definition to preexisting section on procedure for granting green cards. Permits self-petitioning for employment-based visas.

Refugee Crisis in Iraq Act of 2007: Current law grants refugee status to Iraqis who are members of a religious or minority community, have been identified by the Secretary of State, or the designee of the Secretary, as a persecuted group, and have a U.S. citizen immediate relative. Under the bill, refugee status would be expanded to those who have an LPR immediate relative as well.

Processing of Immigrant Visa Applications: Amends current law to require that applications for green cards for immediate relatives of LPRs be processed w/in 30 days.

Note: Processing time is not increased to take into account the drastic increase in the number of LPR immediate relative visa applications under this bill. 30 days for processing green cards for immediate relatives is current law (which only pertains to the spouses and children of U.S. citizens); under the legislation the government has the same amount of time to process a vastly higher number of visas.

Adjustment of Status

- The Attorney General or Secretary of DHS may, under regulations they create, adjust the status of aliens inspected and admitted or paroled into the United States to those of legal permanent residents if the alien applies for LPR status, is eligible to receive a green card, and a green card is available.
- Amnestied aliens who receive “registered provisional immigrant” (RPI) status are considered to be “admitted.”

NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES (section 2306, pg. 307)

- Changes current per-country limits that were set in place for diversity purposes by:
 - Eliminating the per-country cap for employment-based green cards; and
 - Increasing the per-country cap for family-based green cards from 7 percent of a single foreign state to 15 percent

ALLOCATION OF IMMIGRANT VISAS (section 2307, pg. 309)

- Preference allocation for family-based immigrants is as follows (starting the first day of the first FY that begins at least 18 months following the date of enactment):

- Immediate relatives: No Cap
 - Current law includes children, spouses, and parents of U.S. citizens (in the case of parents, sponsoring citizen children must be 21).
 - S.744 expands this definition to include:
 - spouses and children of current green card holders AND their derivatives—accompanying spouses and children; and
 - the derivatives of the child, spouse, or parent of a U.S. citizen
- Creates new preference categories: capped at 226,000 + unused visas from previous FY
 - 1st Preference: Unmarried sons or unmarried daughters (but not children) of U.S. citizens: 35% of family-based total plus unused visas of unmarried sons or daughters of LPRs and married sons or married daughters of U.S. citizens 31 years of age or younger at the time of filing
 - 2nd Preference: Married sons or married daughters of U.S. citizens 31 years of age or younger at time of filing: 25% of family-based total plus unused visas of unmarried sons or daughters of U.S. citizens
 - 3rd Preference: Unmarried sons or unmarried daughters of LPRs: 40% of family-based total plus any unused visas of unmarried sons or unmarried daughters of citizens
 - Note: Current 4th Preference category—siblings of U.S. citizens 21 and over—is eliminated. Green card petitioners receive 10 points for siblings under newly-created merit-based system (see section 2301).
- Preference allocation for employment-based immigrants
 - Creates new exemptions and amends employment-based preference categories: capped at 140,000 + unused visas from previous FY
 - 1st Preference: Uncapped (current EB-1 is capped at 28.6%)
 - Derivatives of ALL employment-based green card holders (spouse or child, as defined by sec. 101(b)(1)(A)-(E));
 - Aliens with extraordinary ability in the sciences, arts, education, business, or athletics;
 - Outstanding professors and researchers;
 - Multinational executives and managers;
 - Aliens earning a doctorate degree (from either U.S. or foreign equivalent); and
 - Physicians who have completed the foreign residency requirements (or who have received a waiver or exemption of such requirements)
 - Advanced degree holders in a STEM field

Note: The new EB-1 category takes the current first preference category, exempts it from the employment-based caps, and then adds additional occupations to the classification. The preexisting 140,000 green card cap is then redistributed amongst the remaining four preference categories.
 - 2nd Preference: Increases from 28.6% to 40% of EB visas plus unused 3rd preference

- Current law includes members of the professions holding advanced degrees, including aliens with certain foreign medical degrees that have been deemed sufficient for acceptance by an accredited U.S. medical residency or fellowship program (bill removes “persons with exceptional ability” and places in uncapped EB-1)
- 3rd Preference: Increases from 28.6% to 40% of EB visas plus unused 2nd preference:
 - Includes skill shortage workers with at least two years training or experience; professionals with bachelor’s degrees; and unskilled shortage workers.
Note: Removes the 10,000 visa ceiling on unskilled workers in this category.
- 4th Preference: Increases from 7.1% to 10% of EB visas plus any unused 3rd preference:
 - Includes “special immigrants” described in sec. 101(a)(27) (other than those described in subparagraphs (A) or (B) thereof)
- 5th Preference: Increases from 7.1% to 10% of EB visas plus any unused 4th preference:
 - Includes employment creation investors who invest at least \$1 million (or \$500,000 if in a “targeted employment area” of high unemployment) and create a certain number of jobs.